

# **Exhibit 4**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-smb

4 - - - - - x

5 SECURITIES INVESTOR PROTECTION CORPORATION,

6 Plaintiff,

7 v.

8 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,

9 Defendants.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 September 9, 2020

17 10:05 AM

18

19

20

21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Motion of Khronos LLC to Quash Trustees Rule 2004

2 Subpoena

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A P P E A R A N C E S :

2

3 BAKER HOSTETLER LLP

4 Attorneys for Trustee Irving Picard

5 45 Rockefeller Plaza

6 New York, NY 10111

7

8 BY: JASON OLIVER (TELEPHONICALLY)

9

10 LAW FIRM OF BINDER & SCHWARTZ

11 Attorney for Khronos

12 366 Madison Avenue, Sixth Floor

13 New York, NY 10017

14

15 BY: ERIC FISHER (TELEPHONICALLY)

16

17 SECURITIES INVESTOR PROTECTION CORPORATION

18 1667 K Street, N.W., Suite 1000

19 Washington, D.C 20006

20

21 BY: KEVIN H. BELL (TELEPHONICALLY)

22

23 ALSO APPEARING TELEPHONICALLY:

24 ALIX BROZMAN

25 DAVID SHEEHAN

1 sue, never identified himself as having a claim against  
2 Montpellier International or Prince Assets LBC.

3 Of course, there's no foreign law affidavit in  
4 front of the Court, but I think the insinuation that there  
5 was anything improper about that or that notice was required  
6 is just -- isn't right.

7 Mr. Oliver described Legacy as a going concern.  
8 It isn't and never was a going concern after Madoff  
9 collapsed because all it ever had was its Madoff accounts.  
10 And the information that was provided to the Trustee in  
11 post-judgment discovery showed the Trustee that Legacy's  
12 assets as of today are essentially exactly what they were in  
13 December 2008 when Madoff collapsed. Nothing has changed  
14 and the Trustee knew or should have --

15 THE COURT: Well, but he's asking really or the  
16 sense I get is that the Trustee is seeking information  
17 relating to transfers by Montpellier and Prince as late as  
18 2019 in the case of one of them. He's not interested in  
19 transfers -- I don't think he's interested in transfers from  
20 Legacy to Montpellier and Prince. I asked him that question  
21 and he said that he was interested in post Montpellier and  
22 Prince transfers, you know, the subsequent transfers.

23 MR. FISHER: Understood, Your Honor. But that's  
24 why I don't think that there's really a rational basis for  
25 the request, because you're talking then about distributions

1 that happened in 2017 and 2019 respectively without knowing,  
2 you know, the hundreds of transactions and all the money in  
3 and out that occurred over the 10 or 11 years between the  
4 initial transfer and this subsequent transfer. So I don't  
5 see how that --

6 THE COURT: How does the Trustee know that -- how  
7 does the Trustee know that without discovery?

8 MR. FISHER: Because if he's looking -- if the  
9 Trustee is looking for information about a liquidation  
10 occurring 10 or 11 years later, he's just got to offer some  
11 theory as to why that's connected to something that happened  
12 so many years before in a fund where there now is evidence  
13 in the record that, you know, this is a substantial fund  
14 with lots of transactions and a very substantial value  
15 before its dissolution.

16 And, Your Honor, finally just to set the record  
17 straight. David Mayer is no longer an officer or in any  
18 position of control at Khronos, LLC; it's Rafael Mayer who  
19 is. And starting at the end of 2016, as we've told the  
20 Trustee and as is before the Court, Khronos no longer  
21 provided any services to Prince Assets LBC or any Prince  
22 entity. And, you know, I'd be happy to provide the Trustee  
23 with whatever information I have about who did provide  
24 services to Prince Assets.

25 THE COURT: But that should have been done before

1 any motion was made. Look, it seems to me -- I'm not going  
2 to prejudge the futility of information about transfers that  
3 occurred after 2010, because that's what we're really  
4 talking about since the last subpoena spoke as of 2010.

5 You may be right, Mr. Fisher. But, you know, the  
6 Trustee's theory is BLMIS made transfers to Legacy, Legacy  
7 made transfers to Montpellier and Prince, and it's  
8 reasonable to assume that in the course of the liquidations,  
9 Montpellier and Prince, if not before then, made transfers  
10 to its investors and/or its creditors. So it's very  
11 difficult to prejudge that.

12 In terms of burden, you really haven't told me  
13 what the burden is other than the information is old, you've  
14 told me that, or at least I thought I read in the papers  
15 that you don't have any information relating to Prince. If  
16 you don't have any information, then you can satisfy the  
17 Trustee to that with a brief deposition or whatever the  
18 person who would know that; that's really the end of it.

19 But it seems to me that the Trustee is entitled to  
20 examine into transfers made by Montpellier and Prince under  
21 Rule 2004 because there's subsequent transferees and he has  
22 a year from the date of the judgment, which I guess was  
23 November 2019 based on what the papers say, to try and trace  
24 those transfers.

25 You may be right; it may be a waste of, you know,

1 the Trustee's or SIPC's money. But it seems to me that if  
2 that's what the Trustee wants to do, that's what the Trustee  
3 can do. I mean, if Legacy doesn't really have any money, I  
4 don't know why it's fighting the judgment so hard, but so be  
5 it, or why the case isn't simply settled.

6 So, I mean, bottom line is the Trustee can  
7 certainly examine into any transfers made by Montpellier or  
8 Prince. Was the information regarding the transfers by  
9 Montpellier and Prince produced in response to the 2010  
10 subpoena, Mr. Fisher?

11 MR. FISHER: I'm sorry, Your Honor. Transfers  
12 from Montpellier and Prince to its investors?

13 THE COURT: Yeah, to whoever.

14 MR. FISHER: No.

15 THE COURT: Well, investors/creditors, okay. So  
16 that was never produced, so it seems to me that the Trustee  
17 is entitled to documents relating to transfers made by  
18 Montpellier and Prince to investors, to creditors, to  
19 anybody.

20 You know, and I will say, Mr. Fisher, you said you  
21 don't -- you know, it's futile for the Trustee to try and  
22 trace, but I don't know what the tracing rules are in the  
23 Cayman Islands or Bermuda, so I really can't say whether or  
24 not it's futile.

25 With respect to some of the stuff that's being



1 requested, Mr. Oliver, I don't understand how it relates to  
2 subsequent transfers. I'm just looking through your  
3 requests. I mean, number four, documents or communications  
4 concerning procedures, guidelines and policies for  
5 investing, redeeming or monitoring BLMIS investments through  
6 Legacy Capital. Why are you asking that?

7 MR. OLIVER: Well, we'd be interested to see if  
8 there was any changes to any of the policies regarding,  
9 again, the subsequent subsequent transfers, especially post-  
10 2010.

11 THE COURT: For what? You're looking, trying to  
12 identify subsequent transfers. I don't know why these  
13 policies have to be produced. You're entitled to documents  
14 relating to subsequent transfers by Montpelier and Prince.  
15 If you can trace them back to BLMIS and find someone you can  
16 sue, well, you're entitled to under Section 550.

17 MR. OLIVER: Right. Your Honor, I agree with your  
18 assessment. That particular document request was to get a  
19 complete picture of the situation regarding any changes in  
20 guidelines or procedures that might affect later in time.  
21 But I do agree with Your Honor with respect to the  
22 information we exactly -- we precisely need, that 550 would  
23 provide us the ability to look into the subsequent  
24 subsequent transfers.

25 THE COURT: I'm just looking through some of these

1 other requests. Well, why don't you see if you can come up  
2 with a formulation of what I've just said, you know,  
3 specifically does the transfer documents -- I don't know  
4 about some of this other stuff. Oh, here it is.

5 I'm looking at 15, 16 and 17: 15 is documents  
6 concerning Prince's credit facility; 16 is documents  
7 concerning a pledge agreement; 17 is documents concerning  
8 relationship between all investors and Prince. Either  
9 somebody got a transfer, or they didn't get a transfer.  
10 What difference does it make about the relationship with the  
11 credit facilities?

12 MR. OLIVER: Those specific document requests  
13 would be related to identifying assets that might be pointed  
14 out in those documents. And also, it might identify the  
15 identities of other subsequent transferees.

16 THE COURT: Okay. But that's swept in with all  
17 documents relating to transfers by Montpellier and Prince  
18 and any transfers of their transferees.

19 MR. OLIVER: Agreed.

20 THE COURT: In other words, the requests should be  
21 tailored to following the money.

22 MR. OLIVER: Yes, Your Honor. We can certainly  
23 work together to put together a proposal.

24 THE COURT: Okay, that's what I'm authorizing.  
25 And I agree, Mr. Fisher, that this should be done

1 expeditiously considering that the statute of limitations  
2 under 550 is about to run in another couple of months.

3 MR. FISHER: Understood.

4 THE COURT: You can submit a consensual order or  
5 settle an order on notice, Mr. Oliver, if you can't agree.

6 MR. OLIVER: Thank you very much, Your Honor.

7 THE COURT: Thank you.

8 MR. OLIVER: Have a good day.

9 THE COURT: You're excused. Thank you.

10 MR. FISHER: Thank you, Your Honor.

11 THE COURT: Thank you.

12

13 (Whereupon these proceedings were concluded at  
14 10:41 a.m.)

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: September 10, 2020